

MARKETPLACE FACILITATORS AND REFERRERS



MULTISTATE TAX COMMISSION

Richard Cram
National Nexus Program Director

Uniformity Committee
July 24, 2018

MARKETPLACE DEFINITION

“Marketplace” is any means, whether physical or electronic, through which one or more sellers may advertise and sell or lease tangible personal property, such as a catalog, Internet website, or television or radio broadcast, regardless of whether the tangible personal property or the seller are physically present in the state.

MTC Model Use Tax Reporting Statute Draft (1/31/18)

MARKETPLACE FACILITATOR DEFINITION

“Marketplace facilitator” means a person that operates or controls a marketplace and facilitates transactions by engaging, directly or indirectly, in communicating the offer and acceptance between a purchaser and a seller. [Drafter’s Note: states might want to consider adding “payment processing” to the definition]

MTC Model Use Tax Reporting Statute Draft (1/31/18)

REFERRER DEFINITION

“Referrer” means a person that: (A) Contracts with a seller or seller’s representative to advertise or list tangible personal property for sale or lease; (B) Makes a referral by connecting a person to the seller or seller’s representative, but not acting as a marketplace facilitator; and (C) Received in the prior year, in the aggregate, at least \$10,000 in consideration from sellers or sellers’ representatives for referrals.

MTC Model Use Tax Reporting Statute Draft (1/31/18)

WASHINGTON DEFINITION

A marketplace facilitator is a business that does the following **three** activities: ([RCW 82.13.010\(3\)](#)):

1. Facilitates the sale of a marketplace seller's product through a marketplace for payment.

WASHINGTON DEFINITION (CONT.)

2. Engages, directly or indirectly, in **any** of the following with respect to bringing the buyer and seller together:

- Transmitting or otherwise communicating the offer or acceptance between the buyer and seller
- Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together
- Providing a virtual currency that buyers can use to purchase products from the seller
- Software development or research and development activities related to any activities with respect to the seller's products listed below, if such activities are directly related to a marketplace operated by the person or an affiliated person.

WASHINGTON DEFINITION (CONT.)

3. Does **any** of the following activities with respect to the seller's products:

- Payment processing services
- Fulfillment or storage services
- Listing products for sale
- Setting prices
- Branding sales as those of the marketplace facilitator
- Order taking
- Advertising or promotion
- Providing customer service or accepting or assisting with returns or exchanges

A marketplace facilitator facilitates sales of a seller's products through a marketplace and engages in other specified activities as provided by the law and outlined above. Websites that merely advertise goods for sale and do not handle transactions do not meet the definition of a marketplace facilitator.

WASHINGTON REFERRER DEFINITION

- Contracts or otherwise agrees with a seller to list or advertise for sale one or more items in any medium, including a website or catalog
- Receives a commission, fee, or other consideration from the seller for the listing or advertisement
- Transfers, via telephone, internet link, or other means, a purchaser to a seller or an affiliated person to complete the sale
- Does not collect receipts from the purchasers for the transaction

Excludes advertisers (newspapers, internet)

AMAZON FBA PROGRAM

- Contractual relationship with marketplace seller
- Inventory sent to Amazon's warehouse/fulfillment center
- Merchandise advertised on Amazon's website
- Takes order, handles payment, shipping, and returns
- Collects sales/use tax if directed by seller, turns collected tax over to seller, who is responsible for remitting and filing returns. Amazon now collects for WA and PA on FBA seller sales

SIZE OF AMAZON FBA PROGRAM

Over 2 million online sellers

- By 2017, 140,000 FBA sellers with gross sales of \$100,000/yr.
- Over 50% (growing) of sales on Amazon's website are by its third-party sellers

Source: Marketplacepulse.com

OTHER MARKETPLACE FACILITATORS

- Walmart-similar to Amazon FBA Program but uses fulfillment centers, store distribution centers, 4,500 stores and the company's transportation fleet to ship online orders
- Etsy--marketplace for crafters, artists and collectors to sell their handmade creations, vintage goods, and both handmade and non-handmade crafting supplies; seller uses Etsy Payments system to handle customer payments (Etsy now collecting in WA and PA)
- Shopify--seller creates online store with shopping cart and opens merchant account; seller responsible for product fulfillment and marketing, tax compliance; Shopify takes the order and informs seller.

EBAY

- eBay merchant creates online store using eBay's guidelines, in order to sell items on eBay
- eBay merchant establishes PayPal account (or a merchant account directly with a credit card company) to handle customer payments
- eBay merchant responsible for inventory storage and management, tracking and filling orders, and shipping product to customer (or contract fulfillment services with various vendors)
- eBay merchant responsible for all tax obligations

DISTINCTIONS BETWEEN MARKETPLACE FACILITATOR AND REFERRER

Are “affiliates” and “referrers” the same thing?

Is “referring” the customer to the seller different from “order taking” (a facilitator function)?

Who takes the customer’s payment (a facilitator function—not a referrer function)?

How is the facilitator or referrer compensated?

MULTICHANNEL SELLING

Growing retailers tend to sell on multiple online platforms, possibly in addition to a “brick and mortar” store and direct online sales. A seller may have an eBay or Shopify store, be an FBA seller, and use Amazon (or another company) to provide fulfillment services on its eBay or Shopify orders. There are companies that specialize in helping the online marketplace seller manage those multiple channels.

POST-WAYFAIR ISSUES

- Need clear triggers for registration, collect & remit obligations for the online marketplace seller, facilitator, or referrer, and coordination among those.
- How can marketplace facilitator or referrer collect/remit if it does not handle customer's payment?
- Should thresholds differ (annual sales volume, # transactions, minimum inventory level)?
- How will multichannel retailers be handled?
- Can registration and return filing obligations be reduced/streamlined?
- Can obligation to register with secretary of state as a foreign entity be eliminated/streamlined?
- Need thresholds for income tax to minimize filing returns.
- Foreign marketplace seller registration and compliance